XII-189 (Jail) C. J. P. R./I-9

CF0000058594

CrA 1175/94

12/9/94 (2)

APPEAL OF PRISONER.

No. 564 Name शनिचर Division Bench (Criminal)

Father's name डोकरा रावता ST NO 286/93

Residence रतनपुर P.S. कापु Age 16 वर्ष

Sentenced to रायगढ़ आजीवन कारावास on 30-8-94 25-8-94

Under Section 302 I.P.C. by सत्र न्यायाधीश मुख्य न्यायिक दंडा० रायगढ़

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date on which copy received

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not.

No. 564 Name शनिचर

Confined in जिला Jail रायगढ़

No. 1344 Dated 30-8-94 199

Forwarded to the मुख्य न्यायिक दंडा० रायगढ़

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

अनुज्ञा - निर्णय प्रतिलिपि।

Superintendent
District Jail, Raigarh

Jail

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No. 91 CJM Raigarh Dated 6-9-1994

Forwarded to the Submitted to Session Judge Raigarh

(C. D. Vaipai)
Judicial Magistrate
RAIGARH (M. P.)
6/9/94

Date of receipt in Appellate court

[P. T. O.]

(17)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.App. 1175/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C.BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

07.02.2006

Ms. Shipra Biswas, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia & Mr. Akhil Mishra, Panel Lawyers for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J

By this appeal under Section 374(2) of the Cr.P.C. accusaed/appellant Shanichar has questioned the legality & correctness of the judgment dated 25.8.1994 passed by learned Sessions Judge, Raigarh in S.T.No.286/93 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C for committing murder of Sukhiram sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that on 21.9.1993 accused/appellant attacked deceased Sukhiram, who is brother-in-law of accused, with the axe as a result of which he died spontaneously. Matter was reported by Dhobiram (PW-1) in the Police Station Kapu under Ex.P-1. On the next day the Investigating Officer after giving notice (Ex.P-2) to the Panchas prepared the Panchnama (Ex.P-3) of the body of deceased Sukhiram, took into possession the blood stained soil & plain soil from the place of occurrence under Ex.P-4. He also took into possession the weapon of

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -२-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

offence i.e. axe under Ex.P-5 in pursuance of the memorandum (Ex.P-6) given by the accused/appellant. Site plan was prepared by the Patwari under Ex.P-9. Clothes of deceased were taken into possession under Ex.P-8. Body of deceased Sukhiram was sent for postmortem examination to the Hospital Pathalgaon under Ex.P-10, where Dr. K.D. Dubey (PW-9) conducted the postmortem examination and prepared the postmortem report Ex.P-22. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur from where report Ex.P-18 was received.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Raigarh, who in turn committed the case to learned Sessions Judge, Raigarh for trial.

The prosecution in order to establish the offence against the accused/appellant examined nine witnesses. On the other hand, learned Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he has been falsely implicated in the crime on account of animosity of the witness.

Learned Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted & sentenced the accused in the manner as mentioned in Para 1 of this judgment.

We have heard Ms. Shipra Biswas, Advocate for accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia & Mr. Akhil Mishra, Panel Lawyers for the State/ respondent.

[पीछे देखिये

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Homicidal death of deceased Sukhiram is not in dispute.

As far as involvement of the accused/appellant in the crime in question is concerned, PW-1 Dhobiram, who lodged the report in the Police Station Kapu, has stated that his house is in front of the house of accused Shanichar, on hearing the noise he went towards the house of accused and saw that Sukhiram and his wife Itwari Bai were sitting and accused/appellant was in another room. Accused & deceased started quarreling while taking about the agricultural field. Accused/appellant came with an axe and attacked Sukhiram on his head as a result of which Sukhiram died spontaneously and accused Shanichar fled away. He called Bihanu and informed him that Shanichar has murdered Sukhiram. Thereafter they lodged the report (Ex.P-1) in the Police Station. PW-2 Itwari Bai, who is widow of deceased Sukhiram, has stated in her evidence that Sukhiram was her husband, on the festival of *Nawakhai* accused Shanichar called her husband and her on the feast and after taking meals Sukhiram asked Shanichar that he has given his sister in the marriage to him and also the land, on hearing this accused Shanichar brought an axe and attacked twice on the head of deceased Sukhiram. At that time she was sitting there. Therefore, in view of the above evidence it is clear that accused/appellant was the author of the crime in question.

In the cross-examination of above witnesses, the defence has not been able to elicit anything, which makes the evidence of above witnesses untrustworthy or unreliable. Moreover, the weapon of offence i.e. axe was

[पीछे देखिये

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — ५ —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recovered under Ex.P-5 at the instance of accused/appellant in pursuance of the information given by him under Ex.P-6. The medical evidence also corroborates the evidence of PW-1 Dhobiram & PW-2 Itwari Bai, therefore, the involvement of the accused/appellant in the crime in question is established and to this extent we do not find any illegality or infirmity in the finding of the trial court.

Learned counsel for the accused/appellant argued that in a sudden quarrel the accused/appellant brought the axe and attacked the deceased, therefore, the intention cannot be attributed to the accused/appellant. But as per settled law the intention can be ascertained from the fact of nature of weapon of offence used, parts of the body where it was assaulted, force with which it was assaulted and the facts leading to crime. In the light of above principles, if we look into the evidence of PW-2 Itwari Bai, accused/appellant assaulted twice on the head of deceased with the deadly weapon axe without any reason or rhyme. Moreover, as per evidence of doctor (PW-9) he found that there was an injury on the head of deceased in the size of 6cm × ½cm × 3½cm in the half moon shape, there was cut from frontal bone to occipital bone, brain material was coming out, parietal, frontal & temporal bones were fractured and turned into pieces. Therefore, looking to the nature of injuries as also the weapon of offence, it is established that the accused/appellant assaulted deceased with the intention to cause his death.

[पीछे देखिये

XI-HC-22

(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is an unfortunate case where the parents of deceased named him as Sukhiram so that he may live long peacefully and with happiness, but unfortunately the accused, whose name is Shanichar, proved detrimental & inauspicious to Sukhiram. Normally Shanichar star is considered as very harmful unless the same is controlled by performing puja, therefore, Shanichar has proved heavy on Sukhiram and committed his murder.

In the result, we do not find any illegality or infirmity in the judgment of the trial court and there is no reason to interfere with the judgment of the trial court. Accordingly, the appeal is devoid of merit, same is liable to be dismissed and it is accordingly, dismissed

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan

21.2.06 6.4.06

[पीछे देखिये